

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03A-061T

IN THE MATTER OF THE APPLICATION OF WESTERN WIRELESS HOLDING CO. INC.
FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER.

**ORDER GRANTING MOTIONS TO INTERVENE AND
DENYING MOTION FOR ADMISSION *PRO HAC VICE***

Mailed Date: May 28, 2003

Adopted Date: May 7, 2003

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of several motions. First, CenturyTel of Eagle, Inc., and CenturyTel of Colorado, Inc. (collectively CenturyTel), submitted a Late Filed Entry of Appearance, Notice of Intervention by Right or, in the Alternative, Motion to Intervene. Western Wireless Holding Company, Inc. (Western Wireless), filed a Motion for Admission *Pro Hac Vice*. The Colorado Telecommunications Association, Inc. (CTA), filed an Entry of Appearance and Motion to Intervene. N.E. Colorado Cellular, Inc. (NECC), also filed an Entry of Appearance and Motion to Intervene. Finally, Western Wireless also filed a Motion for Clarification and, if Necessary, to Waive Certain Requirements of 4 CCR 723-1-70(b)(70).

II. DISCUSSION

2. On February 14, 2003, Western Wireless filed an application seeking designation as an Eligible Telecommunications Carrier (ETC) pursuant to 4 *Code of Colorado Regulations*

(CCR) 723-42-7, in order to receive federal universal support. Western Wireless seeks ETC status within certain service areas of Century Tel.

3. Subsequently, we issued Decision No. C03-0406 on April 18, 2003. In that Decision, we found that Western Wireless' application implicated several policy issues of concern to the Commission. Therefore, we deemed the application complete and remanded it to the Commission *en banc* for a hearing on the application to determine the issues relevant to the application.

A. CenturyTel Motion

4. On April 4, 2003, CenturyTel filed what it captioned, a late filed entry of appearance and notice of intervention by right, or in the alternative, motion to intervene. CenturyTel states that although Commission notice of Western Wireless' application directed interested parties to file interventions on or before March 21, 2003, CenturyTel did not file its intervention until April 3, 2003, because it was unaware of Western Wireless' application until then.

5. However, CenturyTel represents that it has complied with the requirements of Rule 4 CCR 723-1-64 by stating good cause for its late-filed intervention. According to CenturyTel, the Western Wireless application contains a certificate of service that indicates service only upon the Executive Director of the Commission. CenturyTel further represents that Western Wireless did not serve its application on CenturyTel. Further, CenturyTel did not receive notice from the Commission.

6. CenturyTel states that it seeks intervention in this matter to advocate the application by the Commission of the applicable provisions of federal and state law and the rules

of the Commission concerning the granting of ETC status to competitive carriers. CenturyTel additionally indicates that it believes one of the principal issues of contention in the case will be whether sub wire center disaggregation of some of its affected wire centers is legally permissible under application of the law or from a policy perspective.

7. According to Rule 4 CCR 723-1-64(a)(2), to intervene in a matter by right, a party must state the basis for the claimed statutory or legally protected right which may be affected by the proceeding. We find no such statements within CenturyTel's pleading. There is nothing to convince us that CenturyTel may intervene as a matter of right in this proceeding.

8. Rule 64(b) allows a party to intervene permissively in a matter if the party has a substantial interest in the subject matter of the proceeding. Subsection (3) of Rule 64 holds that if an untimely filing is made, the petitioner shall state good cause for the delay. We find that CenturyTel has stated sufficient grounds indicating a substantial interest in the subject matter of this application to grant its motion for permissive intervention. Clearly, Western Wireless' application seeking to provide universal service offerings to rural telecommunications end users within 28 CenturyTel service areas in Colorado, and the policy implications associated with the application support CenturyTel's motion to intervene. We therefore grant CenturyTel's motion pursuant to Rule 4 CCR 723-1-64(b)(1) for permissive intervention in this matter.

9. We further find that CenturyTel has stated good cause to grant its late-filed entry of appearance and motion for intervention. We acknowledge that some errors occurred with providing notice of this application. As a result of those errors, the Commission re-noticed Western Wireless' application and extended the notice period to May 1, 2003. CenturyTel's

pleading, filed on April 3, 2003, was within this subsequent re-notice period and was thus timely filed.

B. Western Wireless Motion for Admission *Pro Hac Vice*

10. Western Wireless filed its Motion for Admission *Pro Hac Vice* pursuant to Rule 4 CCR 723-1-21(a) of the Commission's Rules of Practice and Procedure. Legal counsel for Western Wireless sought the admission of Philip R. Schenkenberg to be permitted to practice before the Commission in this docket.

11. The practices and procedures of this Commission are bound by the Colorado Rules of Civil Procedure (CRCP). In 2002, the Colorado Supreme Court amended portions of the CRCP, particularly those sections of the Rules pertaining to *Pro Hac Vice* admissions. CRCP Rule 221 provides the filing requirements for an out of state attorney to practice in Colorado as follows:

- (a) In order to be permitted to appear as counsel in a state trial court, the attorney must first:
 - (i) File a verified motion requesting permission to appear with the trial court;
 - (ii) Designate an associate attorney who is admitted and licensed to practice law in this state;
 - (iii) File a copy of the verified motion with the Clerk of the Colorado Supreme Court at the Attorney Registration Office at the same time the verified motion is filed with the trial court;
 - (iv) Pay a \$250 fee to the Clerk of the Colorado Supreme Court collected by the Attorney Registration Office; and
 - (v) Obtain permission from the trial court for such appearance.
- (b) In the verified motion requesting permission to appear, the attorney must include:
 - (i) A statement identifying all jurisdictions in which the attorney has been licensed;

- (ii) A statement identifying by date, case name, and case number all other matters in Colorado in which *pro hac vice* admission has been sought in the preceding five years, and whether such admission was granted or denied;
- (iii) A statement identifying all jurisdictions in which the attorney has been publicly disciplined, or in which the attorney has any pending disciplinary proceeding, including the date of the disciplinary action, the nature of the violation, and the penalty imposed;
- (iv) A statement identifying the party or parties represented, and that the attorney has notified the party or parties represented of the verified motion requesting permission to appear;
- (v) A statement that the attorney acknowledges he or she is subject to all applicable provisions of the Colorado Rules of Professional Conduct and the Colorado Rules of Civil Procedure, and that such rules have been read and will be followed throughout the *pro hac vice* admission, and that the verified motion complies with those rules;
- (vi) The name, address, and membership status of the licensed Colorado attorney associated for purposes of the representation;
- (vii) The signature of the licensed Colorado associate attorney, verifying that attorney's association on the matter.

Pursuant to CRCP Rule 221.1, these requirements are also applicable to matters “before any state agency in the hearings or arguments of any particular cause in which, for the time being, [an out-of-state- attorney] is employed ...” *Id.*

12. Western Wireless’ motion fails to comply with these CRCP requirements. Therefore, we deny its motion for admission *pro hac vice*, and urge Western Wireless to file a new motion exhibiting compliance with CRCP Rule 221.

C. CTA’s Motion

13. CTA submitted its entry of appearance and motion to intervene on May 1, 2003. CTA indicates that it seeks intervenor status for a variety of reasons, including concern regarding certification of wireless ETC providers in rural company service areas, and the long-term

implications for the federal Universal Service Fund (USF) of such certifications. CTA also voices concern for the issue of sub-wire center disaggregation of rural company service areas, which is a matter of concern for each of its member companies. Because of the policy implications of this matter, CTA believes it has an obligation to present its member companies' views on these USF issues. Finally, CTA seeks intervenor status to advocate the application by the Commission of the applicable provisions of federal and state law and the rules of this Commission concerning the granting of ETC status to competitive carriers.

14. We find in this matter, that CTA states good cause pursuant to 4 CCR 723-1-64(b)(1) to grant its motion for permissive intervenor status.

D. NECC Motion

15. NECC seeks intervenor status here because it is similarly situated to Western Wireless in that both are wireless telecommunications providers which have received designation as ETCs and Eligible Providers in certain territories within Colorado. NECC requests to intervene in order to assist the Commission by providing information and policy analysis as we decide the issues raised by the application here.

16. We find that NECC states good cause pursuant to 4 CCR 723-1-64(b)(1) to grant it permissive intervention status here.

E. Western Wireless Motion for Clarification

17. On May 6, 2003, Western Wireless filed a motion for clarification with respect to its obligations to file testimony in this docket and further requested a waiver of Rule 4 CCR 723-1-70(b)(7). On April 2, 2003, we deemed Western Wireless' application complete and set the matter for an *en banc* hearing before the Commission. Because its application was deemed

complete by minute entry on April 2, 2003 and the decision was not mailed until April 18, 2003, Western Wireless points out that it was required to file its testimony on or before April 17, 2003 as required by Rule 70(b)(7). Further, the Commission Staff re-noticed the application on April 16, 2003, which notice period expired on May 1, 2003.

18. Therefore, Western Wireless seeks clarification that the original minute entry deeming the application complete is either void or moot given the re-notice of the application. Further, Western Wireless seeks clarification that a schedule for the submission of testimony, including its testimony will be determined at the pre-hearing conference set for May 13, 2003. In the alternative, Western Wireless requests the Commission waive Rule 70(b)(7) as it requires the filing of applicant testimony 15 days after an application is deemed complete. Western Wireless also requests that the Commission waive response time to the motion.

19. As indicated *supra* we set this matter for an *en banc* hearing before the Commission. A pre-hearing conference was set for May 13, 2003, at which time a procedural schedule will be determined that sets dates for testimony and answer testimony to be filed. The dates for discovery will also be set at that hearing as will a date for the hearing and for statements of position if they are deemed necessary. As such, Western Wireless is not required to file its testimony, a detailed summary of its testimony, or copies of its exhibits no later than 15 days after the date the application is deemed complete, as required by Rule 70(b)(7). However, to avoid any procedural confusion we will waive the requirements of Rule 70(b)(7) here and reiterate that relevant procedural dates for the application hearing will be determined at the May 13, 2003 pre-hearing conference.

III. ORDER**A. The Commission Orders That:**

1. The Motion to Intervene of CenturyTel of Eagle, Inc., and CenturyTel of Colorado, Inc., in this matter is granted.
2. The Motion for Admission *Pro Hac Vice* filed by Western Wireless Holding Company, Inc., is denied consistent with the discussion above.
3. The Motion to Intervene filed by Colorado Telecommunications Association, Inc., in this matter is granted.
4. The Motion to Intervene filed by N.E. Colorado Cellular, Inc., in this matter is granted.
5. The Motion for Clarification and if Necessary, to Waive Certain Requirements of 4 CCR 723-1-70(b)(7) and to Waive Response Time filed by Western Wireless Holding Co., Inc., is granted consistent with the discussion above.
6. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
May 7, 2003.**

(S E A L)



ATTEST: A TRUE COPY

Bruce N. Smith
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GREGORY E. SOPKIN

POLLY PAGE

JIM DYER

Commissioners